

**UNIVERSAL PERIODIC REVIEW (UPR)  
REPUBLIC OF MOLDOVA**

**OTHER STAKEHOLDERS' REPORTS:**

**NATIONAL HUMAN  
RIGHTS INSTITUTIONS  
(NHRIs)**

(2nd UPR cycle)



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# CONTENTS

## CHAPTER 1:

<b>UPR report submitted by the Office of the People's Advocate (Ombudsman)</b> .....	3
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## CHAPTER 2:

<b>UPR report submitted by the Council on the Prevention and Elimination of Discrimination and Ensuring Equality</b> .....	18
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## CHAPTER 1:

# **UPR report submitted by the Office of the People's Advocate (Ombudsman)**

This Report has been developed by the Office of the People's Advocate (Ombudsman) of the Republic of Moldova, in its capacity as National Human Rights Institution accredited with the "B" status. The Report provides an assessment of the human rights situation based on petitions from citizens, the monitoring conducted by the Ombudsman and the official information provided by the relevant social actors. In the process of development of the Report, the Ombudsman had consultation meetings with key representatives of NGOs.

In November 2009, the Ombudsperson's Institution was accredited as an NHRI with the "B" status. Since 2008, within the Ombudsperson's Office that has overall competences, there is a specialised Ombudsperson – the Ombudsperson for Child's Rights. During 2008-2014, the Ombudsperson exercised the mandate of the NPM, in consultation with the civil society<sup>1</sup>. In April 2014, the Parliament adopted the Law on People's Advocate (Ombudsman), by which the Centre for Human Rights was reorganised into the Ombudsperson's Office and the number of Ombudspersons was reduced from 4 to 2. However, the expansion of the mandate was not followed by financial consolidation, and the parameters and technical condition of the building where the NHRI is located does not allow hiring more staff, creating proper working conditions and ensuring reasonable adaptation of the building for the people with special needs.

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1 On May 09, 2014 the new Law on People's Advocate (Ombudsman) No. 54/03.04.2014 came into force. According to the law, the mandate of the NPM is exercised by the Council for Prevention of Torture established under the Ombudsperson's Office, which is composed of 5 representatives of the civil society, the Ombudsperson and the Ombudsperson for Child's Rights.

The Ombudsperson's Office is an autonomous public authority independent organisationally, functionally and financially from any public authority and legal entity regardless of the type of ownership and legal organisation form, as well as from any individual, including from official person of any level. The Office provides the necessary assistance to the Ombudsperson and the Ombudsperson for Child's Rights, the members of the Council for Prevention of Torture; according to the law,<sup>2</sup> it cooperates with international human rights organisations.

### **Strengthening the National Human Rights Institution (NHRI) according to the Paris Principles:**

Following multiple evaluations and recommendations by international human rights institutions, reform of the Moldovan NHRI was included as an objective in the National Human Rights Action Plan for 2011-2014<sup>3</sup> and as a strategic area in the Judicial Sector Reform Strategy for 2011-2016<sup>4</sup>.

The new Law No. 52 on People's Advocate (Ombudsman) approved by Parliament on 03.04.2014 does not provide adequately for reform of the institution and strengthening its capacities. Gaps have been also identified in the new regulatory frame work that impede the execution of the mandate of the Ombudsperson and the institution. Some provisions of the law have been declared unconstitutional.<sup>5</sup> Upon request of the Ombudsperson, the Venice Commission delivered its opinion<sup>6</sup> about some issues related to the new NHRI

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2 The Law for approval of the Regulation on Organisation and Operation of Ombudsperson's Office No.164 of 31.07.2015.

3 Decision of the Parliament of Moldova No.90 of 12.05.2011 for approval of the National Human Rights Action Plan for 2011-2014.

4 Law No. 231 of 25.11.2011 for approval of the Justice Sector Reform Strategy for 2011-2016; Parliament Decision No. 6 of 16.02.2012 for approval of the Action Plan for implementation of the Judicial Sector Reform Strategy for 2011-2016.

5 Decision of the Constitutional Court No.27 of 13.11.2014, <http://constcourt.md/ccdocview.php?tip=hotariri&docid=518&l=ro>. The notification regarding the control of the constitutionality of the phrase "submitted by a person declared incapable by a court decision" from Art.21 par.(5) let. e) of the Law on the People's Advocate (Ombudsman) No.52 of April 3, 2014 was sent by the Ombudsperson on June 18, 2014. According to the provision, which was challenged to the Constitutional Court, the Ombudsperson was not able to receive for examination the petitions filed by persons who were declared incapable by a court decision; Decision of the Constitutional Court No. 27 of 13.11.2014, <http://constcourt.md/ccdocview.php?tip=hotariri&docid=518&l=ro>.

6 Opinion No.808/2015 of 25.06.2015 of the European Commission for Democracy through Law (Venice Commission), [http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2015\)018-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2015)018-e).

model chosen by Moldova, and the Directorate General Human Rights and Rule of Law of the Council of Europe<sup>7</sup> gave an opinion about the gaps in Law No.52/03/04/2014 regarding the establishment and operation of the National Preventive Mechanism against Torture. Legal complications undermine the operation of the Child's Ombudsperson and the National Preventive Mechanism against Torture, the rank and the remuneration of the Ombudsperson, his functional independence and independence from other institutions, and the financial resources of the Ombudsperson's Office.

Two major issues for the NHRI are the insufficient funding and the lack of adequate premises. The institution is located in a damaged building and the Government has, over several years, not been able to identify, a building that meets the requirements of the institution<sup>8</sup>.

### **Recommendations:**

- Revise Law No. 52 to ensure that it meets international standards and good practice;
- Provide suitable premises and facilities for the Ombudsperson's Office and properly fund the activities of the Ombudsperson.

## **Rights of the Child:**

### ***Inclusion of children with disabilities***

Inclusion of children with special education needs and disabilities (SEND)<sup>9</sup> requires the development of support services for teaching staff, the parents and the children with special needs<sup>10</sup>. In 2014-2015, there were 101

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7 Opinion of the Directorate General Human Rights and Rule of Law (Directorate of Human Rights) of the Council of Europe on the Law no. 52 of 3 April 2014 on the People's Advocate (Ombudsperson) of Moldova, Chapter V - The National Mechanism for the Prevention of Torture, Ref DGI (2015) 25 of 28 November 2015, [http://www.coe.md/images/stories/Articles/CJR-Project/npm\\_omb\\_law\\_md\\_opinion\\_ro.pdf](http://www.coe.md/images/stories/Articles/CJR-Project/npm_omb_law_md_opinion_ro.pdf)

8 Report of the Ombudsperson on Human Rights Observance in Moldova in 2015.

9 National Program on Development of Inclusive Education for 2011-2020; Order of the Minister of Education (MoE) No.99 of 26.02.2015; Order of the MoE No.100 of 26.02.2015; Order of MoE No.98 of 26.02.2015; Order of the MoE No.156 of 20.03.2015; Order of MoE No.311 of May 05, 2015

10 [http://www.ombudsman.md/sites/default/files/document/attachments/1354\\_raport-2015\\_cpdom\\_small\\_0.pdf](http://www.ombudsman.md/sites/default/files/document/attachments/1354_raport-2015_cpdom_small_0.pdf).

deinstitutionalised children with SEND studying, while in 2015-2016 - there were 591 children<sup>11</sup>. There is an increasing need for support services.

**Recommendations:**

- Adapt education institutions to respond to the needs of children with disabilities;
- Provide regular training for teaching staff;
- Develop the necessary mechanisms and tools;

***Right of the child to being raised in a family environment***

The residential childcare system reform<sup>12</sup> is encumbered by: insufficient alternative services to the residential institutions; inaction by guardianship bodies responsible for the assistance and protection of orphan children and children without parental care; insufficient funding for social services (guardianship/trusteeship, professional parental care, family-type houses); and inadequate allowances for orphan children and children without parental care.

Guardianship authorities fail to monitor properly the situation of deinstitutionalised children. Contrary to the legislation, the placement of children from residential institutions in accordance with the minimal care standards has not been revised<sup>13</sup>; orphan children graduates of residential institutions are not provided with dwelling space/social housing<sup>14</sup>.

**Recommendations:**

- hold accountable the actors responsible for the social assistance and protection of orphan children and children without parental care;
- provide sufficient funds for the establishment and operation of alternative services.

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11 <http://www.ombudsman.md/ro/content/respectarea-drepturilor-copilului-republica-moldova-anul-2015>.

12 Government Decision No. 784 of 09.07.2007 for approval of the National Strategy and Action Plan on the Reform of the Residential Child Care System for 2007-2012; Government Decision No. 434 of 10.06.2014 for approval of the Strategy for Child Protection for s2014-2020.

13 [http://www.ombudsman.md/sites/default/files/document/attachments/studiu-\\_protectia\\_copiilor\\_in\\_rm\\_0.pdf](http://www.ombudsman.md/sites/default/files/document/attachments/studiu-_protectia_copiilor_in_rm_0.pdf).

14 Law No.75 of April 30, 2015 on Housing.



## ***Preventing and combating child labour exploitation***

The legislation<sup>15</sup> sets out the age and conditions for child employment. During the reporting period, policies have been developed and implemented for preventing and combating child labour exploitation<sup>16</sup> and sanctions for the violations related to child labour have been tightened<sup>17</sup>. Official statistics show a decrease of this phenomenon<sup>18</sup>.

Traditionally, minors are involved in labour in agriculture, the processing industry, wholesale and retail trade, etc. They usually come from disadvantaged families.

### **Recommendation:**

- Undertake information campaigns, particularly for vulnerable groups, as well as efficient implementation of the existing mechanisms for monitoring the employment and sanctioning employers who violate the law.

## ***Juvenile justice***

Progress was made in strengthening juvenile justice by establishing new mechanisms and implementing them<sup>19</sup>. However, there is no legal and institutional framework for sanctioning and re-educating minors who commit crimes but who may not be held criminally accountable.

### **Recommendations:**

- provide sufficient financial and human resources;
- implement mechanisms for collection and processing of data about the juvenile justice system<sup>20</sup>;

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15 Labour Code No.154 of 28.03.2003.

16 National Action Plan on Preventing and Eliminating the Worst Forms of Child Labour for 2011-2015, approved by Government Decision of October 11, 2011.

17 Art. 1651, art. 168 of the Criminal Code, art. 55, 551, 58 of the Administrative Code, art. 71 of the Labour Code.

18 <http://www.ism.gov.md/ro/content/raport-anual-0>; <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=359314>

19 Report of the Ombudsperson on Human Rights Observance in Moldova in 2015. <http://ombudsman.md/ro/content/respectarea-drepturilor-copilului-republica-moldova-anul-2015>.

20 Joint Order of the Minister of Justice and the Minister of Interior, No.19/17 of January 26, 2015.

- establish an institutional and legal framework for children who committed crimes stipulated by criminal law but have not reached the age of criminal liability;
- strengthen the role of authorities in re-socializing and reintegrating minors;
- develop and implement a national plan for preventing and combating juvenile delinquency<sup>21</sup>.

### **Securing Qualitative Healthcare Services**

The lack of proper tools for implementing health legislation leads to irregularities in the system, which limits access to and the quality of healthcare services. There is a shortage of competent staff in the field of public health, particularly in rural areas, as a result of the exodus of specialists and the unsatisfactory infrastructure and sanitary-hygienic condition of healthcare facilities. Obsolete medical equipment and insufficient technical and material resources<sup>22</sup> impede access by the population to quality medical services and demotivate medical staff. Because the latter have to work in difficult conditions, facing fatigue and insufficient remuneration, many leave the healthcare system.

Another healthcare issue is securing and monitoring the quality and safety of services provided. The procurement of medicines in public healthcare facilities is based on the lowest price, which does not always ensure the best quality. Healthcare facilities, particularly in rural areas, lack sufficient equipment and medicines for quality first aid. This leads to an avoidable high mortality rate. The accreditation of public healthcare facilities is a formality– without thorough control of hospital conditions, the quality and safety of the equipment used, and adequate assessment of patients’ satisfaction. There are no efficient procedures for examination of petitions and medical errors and for centralised monitoring of malpractice cases. Observance by health professionals of patients’ rights, particularly the rights to private life, to choice and to being informed, is low. There is unequal access to some specialised services such as

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21 United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines).

22 Expense Strategy for the Health Sector. 2012-2014, [www.minfin.md/common/files/CCTM](http://www.minfin.md/common/files/CCTM); National Public Health Strategy for 2014-2020, approved by Government Decision No.1032 of 20.12.2013.

medication for the people suffering from cancer and HIV/AIDS and qualified palliative care. The existing system for control and prevention of tuberculosis, protection of reproductive health and sexual health is inefficient<sup>23</sup>.

The healthcare system is marked by corruption, which is driven by poverty and lack of efficient tools to fight this phenomenon. Around 93% of the Moldovans provide informal payments to doctors and other medical staff. Yearly, such payments amount to the equivalent of 100 million USD. Informal payments are also widespread among people who do not hold a health insurance policy. Around 80% of citizens who address to the Ministry of Health, complain about being forced to make informal payments to doctors<sup>24</sup>.

### **Recommendations:**

- the state should develop the necessary tools to create and promote zero tolerance of corruption within the health system;
- an independent institution should be established to investigate malpractice cases and legal mechanisms should be developed to secure patients' rights to receive compensation for any kind of damage caused by medical acts.
- the criteria for evaluation of the standards for accreditation of healthcare and pharmaceutical facilities should be revised;
- compliance criteria should be introduced to require observance of human rights during the provision of medical services. These should be focused on quality, security and safety requirements of medical law, for both the patient and medical staff.

## **Quality and Accessibility of Drinking Water**

The quality of drinking water and access to it remains a serious problem for Moldova. The volume of water currently available is about 500 m<sup>3</sup> per capita or

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23 Reports of the Ombudsperson on Human rights Observance in Moldova in 2015, 2014, 2013, 2012; [www.ombudsman.md](http://www.ombudsman.md)

24 Opinion of the Head of the National Health Insurance Company expressed within the IInd Edition of the National Health Forum, November 25-26, 2013, Chisinau, [www.moldova-suverana.md/article/pile-informale-n-sistemul-de-sntate-se-ridic-la-pestea-2-mlrd-de-lei\\_3872](http://www.moldova-suverana.md/article/pile-informale-n-sistemul-de-sntate-se-ridic-la-pestea-2-mlrd-de-lei_3872).

even less<sup>25</sup>. The management of water resources is flawed and unbalanced, and the quality poor. The share of only 62% of inhabitants have permanent access to improved water sources, and only 56.6% have improved sewerage systems. There is a significant difference between rural (22.8%) and urban (68.9%) areas in access to water supply services, while in terms of access to the public sewerage system, the difference is even more alarming – 1% compared to 50.1%.<sup>26</sup>

Maintenance of water supply and sewerage systems is done within the limits of existing financial and economic resources. Such systems continue to degrade, causing loss of water and energy resources. The institutions working in water supply and sanitation are fragmented, have limited resources to ensure efficient management of current issues and to plan medium and long term investments. Budgetary constraints mean financing from public funds is low.

### **Recommendations:**

- improve the operational and financial performance of water supply enterprises to increase the safety and quality of services provided to the population;
- increase the efficiency of sectoral policies for the oversight, management and protection of water resources; and
- monitor the water quality at national level in a systematic and coordinated manner.

## **Independence, Transparency and Efficiency of the Judiciary**

Under the Justice Sector Reform Strategy for 2011-2016<sup>27</sup>(JSRS), a number of laws have been adopted/amended and actions have been undertaken to ensure the accessibility and independence of the judiciary and to increase its

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25 The international recommended limit is 1,700 m3 as a secure level of availability of annual renewable water supply per person. A volume of available water lower than 1000 m3 per capita yearly may hinder the economic development and affect the health and living standard of the population.

26 National Human Development Report 2014. Good Corporate Citizens Public and Private Goals Aligned for Human Development, [www.undp.md](http://www.undp.md)

27 Law No. 231 of 25.11.2011 for approval of the Justice Sector Reform Strategy for 2011-2016; Parliament Decision No. 6 of 16.02.2012 for approval of the Action Plan for implementation of the Judicial Sector Reform Strategy for 2011-2016.

transparency and efficiency<sup>28</sup>. However, no progress has been made in strengthening the integrity of judicial actors: anti-corruption measures and professional conduct standards have not been implemented in all judicial institutions; and there is insufficient promotion of intolerance towards corruption.

The judicial system is perceived by the population as being corrupt. This affects seriously the credibility of the justice delivered and fuels distrust by citizens of the integrity of the individuals working in this field. Bi-annual surveys conducted by the Public Policy Institute<sup>29</sup> since 2003 show a dramatic decrease of citizens' confidence in justice, from 26% in May 2012 to 12% in November 2015.

### **Recommendations:**

- eradicate corruption in the system;
- ensure the continuity of the reform by identifying and developing a general framework for future policies after expiry of JSRS; continue efforts to build a justice system that is accessible, efficient, independent, transparent, professional, and accountable to citizens.

## **Securing Minimal Detention Conditions**

Detention conditions in Moldovan penitentiaries have not improved significantly nor yet attained a level to avoid amounting to inhuman or degrading treatment. The Ombudsman has identified a systemic problem with overpopulation of the prisons, hygiene conditions, poor quality and insufficient quantity of food, and lack of proper healthcare<sup>30</sup>. This is reinforced by the decisions of the European Court for Human Rights<sup>31</sup>.

The economic crisis has resulted in the cessation of capital investments since July 2015, making it impossible to implement policies adopted to improve

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28 Overall Reports on the Implementation of the SRJS, <http://justice.gov.md/tabview.php?l=ro&idc=489>.

29 <http://www.ipp.md/lib.php?l=ro&idc=156>.

30 Report of the Ombudsman on Human Rights Observance in the Republic of Moldova in 2011, 2012, 2013, 2014, <http://www.ombudsman.md/ro/advanced-page-type/anuale>.

31 ECHR decisions on the case of Mitrofan v. the Republic of Moldova No. 50054/07, 15.01.2013; Silvestru v. the Republic of Moldova, No.28173/10, 13.01.2015; Pisaroglu v. the Republic of Moldova, No.21061/11, 03.03.2015, Mescereacov V. the Republic of Moldova, No.61050/11, 16.02.2016.

the infrastructure of custodial facilities in line with standards, or to develop and implement construction/renovation plans.<sup>32</sup>

Although the law<sup>33</sup> sets out detention standards and criminalises intentional inhuman or degrading treatment applied, there are no effective mechanisms to enable the authorities to examine complaints related to detention conditions and to provide effective remedies<sup>34</sup>.

**Recommendations:**

- speed up the construction of arrest houses and renovate detention facilities;
- take action to guarantee efficient remedies (with preventive and compensatory effect) for improper detention conditions in violation of the law and international treaties.

**Preventing Human Trafficking**

The lack of information and the deplorable social and economic condition of vulnerable groups are key factors that encourage human trafficking. Information campaigns have been conducted to prevent and fight this phenomenon and the Service for Assistance to and Protection of the Victims of Human Trafficking (HT) was established<sup>35</sup>. The legal framework has been amended<sup>36</sup> to make a distinction between forced labour and HT for purpose of labour exploitation and between pimping and HT for purpose of sexual exploitation. Sanctions have been tightened for child trafficking, pimping and the organisa-

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32 Government Decision No.1624 of 31.12.2003 for approval of the Concept Paper on the Reform of the Penitentiary System and the 2004-2020 Action Plan for implementation of the Concept Paper on the Reform of the Penitentiary System; Parliament Decision No. 6 of 16.02.2012 for approval of the Action Plan for implementation of the Judicial Sector Reform Strategy for 2011-2016. Specific area of intervention 6.4.2.

33 Enforcement Code of the Republic of Moldova No.443 of 24.12.2004, Status of punishment execution by the convicts, Government Decision No.583 of 26.05.2006.

34 ECHR Decision in the case of Sisanov v. the Republic of Moldova, No. 11353/06, 15.09.2015.

35 Government Decision No.898 of 30.12.2015, for approval of the Framework Regulation on Organisation and Operation of the Service for Assistance and Protection of Human Trafficking Victims and the Minimal Quality Standards, Official Gazette No. 2-12/5 of 15.01.2016.

36 By Law No.270 of 07.11.2013, for amendment and supplementation of some legal acts, the Criminal Code was amended in art. 158, 165, 168, 206, 220, 302, 316, as well as the Criminal Procedure Code, in art. 90, 110, 215.

tion of begging, and the commission of HT crimes by national and international civil servants. Beneficiaries of services of HT victims have been criminalised, as has the trafficking of organs and the advertising of the sale and purchase of organs.

However, official statistics<sup>37</sup> do not yet show a consistent trend downwards in the number of crimes in this area.<sup>38</sup>

**Recommendation:**

- continue priority actions in the HT area, including information campaigns; measures for economic rehabilitation of socially vulnerable groups; support for the start-up of small and medium businesses, particularly in rural areas.

**Ensuring Gender Equality**

Gender disparity is still an issue. On the labour market, women are over-represented in low paid occupations and underrepresented in leadership positions. Roma women, women with disabilities, and other vulnerable groups are frequently excluded from public life.

**Recommendation:**

- continue affirmative action to strengthen the legal framework, including by: establishing the a minimum quota for women on the electoral lists of political parties; promoting gender equality; and eliminating gender stereotypes from the educational curriculum.

**Preventing and Combating Domestic Violence**

Official statistics show an increased number of domestic violence cases (2012– 6569; 2013-6706; 2014- 7338; 2015- 9203) and inefficient intervention by the authorities responsible for protection of victims.

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37 <http://procuratura.md/file/raport.2014.final1.14.pdf>  
<http://procuratura.md/file/Raport%20PG%202013%20final.pdf>  
<http://procuratura.md/file/RAPORTUL%20PG%20pentru%20a.%202012.pdf>  
<http://procuratura.md/file/RAPORT%202011.pdf>

38 In 2011- 372 crimes; in 2012 – 440 crimes; in 2013 – 269 crimes; in 2014 - 292 crimes.

**Recommendations:**

- further improve the existing regulatory framework;
- ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence;
- increase information for citizens through permanent awareness campaigns;
- secure sufficient funding for services designed to assist and protect victims of domestic violence.

**Ensuring the Rights of Persons with Disabilities**

During the reporting period, the regulatory framework for ensuring the implementation of the UN Convention on the Rights of Persons with Disabilities was adopted<sup>39</sup>. However, insufficient mechanisms for implementing the Convention have been developed.

Persons with disabilities are not treated as equal members of the society: they have low accessibility to social infrastructure, transportation, and information; insufficient social services at community level; low levels of employment; and social benefits under the minimal subsistence level<sup>40</sup>. Persons with mental disabilities are denied the right to vote, free access to justice and the right to establish a family.

**Recommendation:**

- to ratify the optional protocol to the Convention;
- establish an independent mechanism for monitoring the implementation of the Convention;
- eliminate the barriers that deny persons with disabilities an independent life and full participation in all aspects of life;
- develop and implement mechanisms for integration of persons with disabilities on the labour market;

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39 Law on Social Inclusion of Persons with Disabilities No.60 of 30.03.2012 and the related documents for enforcement of the law and for creating social community services.

40 Reports of the Ombudsperson on the Human rights Observance in Moldova in 2013, 2014, 2015, <http://www.ombudsman.md/ro/advanced-page-type/anuale>



- raise social awareness;
- challenge stereotypes about persons with disabilities;
- ensure the right of each person to exercise his/her legal capacity by abolishing the legal provisions regarding the mechanism for substitution of decisions and replacing it with a mechanism for support in exercising their legal capacity.

## **Securing a Decent Standard of Living**

The economic crisis and constant increases in prices and tariffs for consumer goods and services further affect the living standard of the population in general and lead to the impoverishment of the most vulnerable groups.

The existing pension system is unfair and unsustainable. The indicators for calculating the pension are out-dated. The Ombudsman has notified the Government that the average monthly pension does not cover the minimal subsistence level for retired people.<sup>41</sup> An analysis of official data<sup>42</sup> for the past 3 years shows that the average pension received by around 98% of the total number of retired persons is below the minimum subsistence level<sup>43</sup>.

The national minimum wage<sup>44</sup> does not cover the minimum subsistence level<sup>45</sup>. The Law on Minimal Subsistence Level<sup>46</sup> does not adequately regulate the adjustment of social benefits and the national minimum wage to the minimum subsistence level<sup>47</sup>.

### **Recommendations:**

- ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

41 (2013-76.1%; 2014-78%; 2015-81.1%)

42 National Social Insurance House <http://www.cnas.md/lib.php?l=ro&idc=244&nod=1&>

43 Reports of the Ombudsperson on the Human rights Observance in Moldova in 2013, 2014, 2015

44 Government Decision No.550 of 09.07.2014 on Establishment of the Size of the National Minimum Wage.

45 Government Decision No.285 of 30.04.2013 for approval of the Regulation on Calculation of the Size of the Minimal Subsistence Level. (years 2009-2014 - 600 MDL (27 EUR), since 2014 - 1000 MDL (45 EUR))

46 Law No.152 of 05.07.2012 on the Minimal Subsistence Level

47 Reports on Human Rights Observance in Moldova for 2012, 2013

- adjust social benefits and national minimum wage to the minimum subsistence level.

## **Promoting and Ensuring Human Rights in the Transnistrean Region of Moldova**

During the reporting period, the human rights situation in the Transnistrean region has not improved significantly. Poor treatment in places of detention; systemic violations of the rights to education and to property, and freedom of movement are just a few of the issues faced by the persons residing in the region and in the area with an increased security regime<sup>48</sup>. Although some objectives for promoting and securing human rights in the Transnistrean region were included in the National Human Rights Action Plan for 2011-2014<sup>49</sup>, many of them have not been achieved.

In October 2012, the Ombudsperson's Institution opened a representative office in the Varnita village, situated in the area with increased security regime. The representative office monitors, within available sources, the observance of human rights in the Transnistrean region and contributes to promoting human rights by supporting the activity of NGOs in the region.

Following the war of Transnistria in 1992, around 130 thousand people left the region and were internally displaced. The lack of a law about internally displaced people denies them guarantees for protection and creates a legal vacuum. The existing law ignores internally displaced persons and has no mechanisms for their protection.

### **Recommendations:**

- include the topics of monitoring, promotion and protection of human rights on the negotiations agenda within existing formats;

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<sup>48</sup> Annual report of the Ombudsperson on Human Rights Observance in the Republic of Moldova, <http://ombudsman.md/en/advanced-page-type/anuale>; reports of Promo-LEX association on the observance of human rights in the Transnistrean region of Moldova, <https://promolex.md/index.php?module=publications>; Report on Human Rights in the Transnistrian Region of the Republic of Moldova, by Thomas Hammarberg, February 2013, file:///C:/Users/CPDOM/Downloads/Senior\_Expert\_Hammarberg\_Report\_TN\_Human\_Rights%20(1).pdf

<sup>49</sup> Parliament Decision No.90 of 12.05.2011 for approval of the Human Rights Action Plan for 2011-2014.

- create a sectoral human rights working group<sup>50</sup>;
- actively support civil society efforts in promoting human rights in the Transnistrean region; and
- withdraw reservations about non-observance of international treaties in the Transnistrean region, on signature, acceptance, approval or joining of international treaties.

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50 By Government Decision No.1178 of 31.10.2007 for enforcement of the initiatives of the President of Moldova on increasing the confidence and security in the context of settlement of the Transnistrean issue, the list of sectoral working groups and the membership there was approved: working group for economy and trade, working group for infrastructure development; working group for ensuring proper operation of the railway, working group for health protection and social issues, working group for education and science, working group for demilitarisation and security strengthening, working group for humanitarian aid, working group for agriculture. The working groups created in Chisinau and Tiraspol aim at implementing jointly specific projects in the social and economic, humanitarian and security areas, including with the support of international partners, as well as at contributing to supporting the population and creating conditions proper for conducting negotiations for the political regulation of the conflict. The Ombudsman recommends creating a sectoral human rights working group starting in 2013 (<http://ombudsman.md/ro/advanced-page-type/anuale>).

## CHAPTER 2:

# **UPR report submitted by the Council on the Prevention and Elimination of Discrimination and Ensuring Equality**

I. This report is submitted by the Council on the Prevention and Elimination of Discrimination and Ensuring Equality (hereinafter the Council) within Cycle II of the Universal Periodic Review of Moldova. The Council is an independent public institution established on 31 July 2013.<sup>51</sup>

### **Summary**

II. Key recommendations for the Moldovan Government: (i) enable the Council on the Prevention and Elimination of Discrimination and Ensuring Equality with investigative and sanctioning powers; (ii) allocate sufficient funds for the Council to effectively exercise its functions; (iii) adopt positive measures conducive to substantive gender equality in politics, employment and family life; (iv) amend the legal framework to ensure that persons with disabilities enjoy legal capacity and exercise their rights on equal basis with others; (v) adopt legislative and other measures to prevent and combat discrimination on the grounds of religion and belief; (vi) develop and adopt policies to prevent and eliminate stigmatization and discrimination of Roma; (vi) adopt legislative and other measures to effectively investigate and prosecute hate crimes.

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<sup>51</sup> For further information please see [www.egalitate.md](http://www.egalitate.md)

## **1. Anti-discrimination legislation**

- 1.1. In 2012, the Republic of Moldova adopted law no. 121 on ensuring equality, establishing the legal and institutional framework for combating discrimination. The law prohibits discrimination in the political, economic, social, cultural and other spheres of life. The criteria protected from discrimination are race, color, nationality, ethnic origin, language, religion and beliefs, gender, age, disability, opinion, political affiliation or any other similar criterion. The list of criteria is indicative, not exhaustive.
- 1.2. Established in compliance with the Law no. 121, the Council is an independent institution specialized in prevention and elimination of discrimination and ensuring equality. The mandate of the Council relates primarily to the examination of complaints alleging discrimination, assessment of legislation from the equality perspective and promotion of equal opportunities.
- 1.3. Analysis of the activity of the Council reveals the need to eliminate the operational impediments faced by the institution. In the process of exercising its mandate, the Council must verify the accuracy of the information presented, which requires field visits, including to places where persons are deprived of liberty (penitentiaries, medical institutions). The power of on-site investigation will enable the Council to confirm or refute the facts stated in complaints.
- 1.4. The Council is competent only to find offences with discriminatory elements, the application of sanctions being the prerogative of the courts. The power to apply administrative sanctions for discrimination would upscale the practical implementation of anti-discrimination legislation.
- 1.5. A critical issue is the need to provide the institution with an office corresponding to the standards of safety, health and accessibility. The current office of the Council does not provide adequate conditions necessary for the proper conduct of the work of the staff of the institution and does not comply with accessibility requirements.

## Recommendations:

- 1.1. Amend the legislation to empower the Council with investigation and sanctioning powers;
- 1.2. Ensure proper funding for the institution in compliance with the Paris Principles relating to the Status of the National Human Rights Institutions.

## 2. Discrimination against women

**2.1. Women are under-represented** in Parliament, Government, other central and local public authorities. In 2015, women accounted for 20.7% in the Moldovan Parliament and 25% in the Government of the Republic of Moldova. The draft bill on gender quotas, welcomed by the Council,<sup>52</sup> is pending second reading approval of the Parliament since July 2014.

**2.2. Legal provisions and policies**, originally designed to reduce the factual inequalities between women and men and to compensate for the disadvantages suffered by women for their role in childcare, **are over-protective**. Women are often the ones who assume responsibility for childcare. The statistical data reveals that the employment rate of women with children under the age of two represent 15.3%, compared to 53% for men. In addition, the society increasingly recognizes the importance and need to engage both parents in childcare. In this respect, the law shall encourage men to get involved in childcare and to support women return as soon as possible on the labor market.

2.3. The labor law provides for the right to leave for childcare up to 3 and up to 6 years with the possibility of preserving the job, as well as a number of guarantees for persons benefiting from these leaves. This imposes a fairly large burden on the employer and generates situations of discrimination against women in employment. The complaints examined by the Council reveal discriminatory practices, as well as the conclusion of labor contracts for a fixed period of time with women and the termination of the

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52 See the opinion of the Council, issued on 19.05.2015, available online at <http://egalitate.md/index.php?pag=news&id=832&rid=737&l=ro>

employment relationship in case of pregnancy.<sup>53</sup> In addition to that, the Council found plenty cases of employment advertising that are discriminatory on the ground of sex.<sup>54</sup>

- 2.4. Another obstacle to achieving equality between women and men is the **domestic violence against women**, manifested in the form of family violence and sexual aggression. In most cases, the victims of this violence do not receive any effective protection. Although the legal framework provides for protective measures for victims of domestic violence, as well as sanctions for the perpetrator (for committing acts of violence), most often women-victims do not have access to the respective legal remedies.
- 2.5. Because of the **persistence of stereotypes and preconceived ideas concerning the role of women in the family**, the authorities do not appreciate the seriousness of the problem of domestic violence and do not react promptly when being addressed with complaints by victims. The Council is concerned about the persistence of this discriminatory attitude towards women leading to state's failure to investigate effectively cases of domestic violence and ensure equal protection by the law.<sup>55</sup>

### **Recommendations:**

- 2.6. Adopt positive measures by introducing a minimum quota to ensure a fair representation of women in the decision-making process;
- 2.7. Remove the over-protective provisions from the labor legislation and promoting policies supporting the reconciliation between the professional and personal life in order to ensure gender equality;
- 2.8. Adhere to the Council of Europe Convention on preventing and combating violence against women and domestic violence;
- 2.9. Strengthen efforts to prevent, investigate and punish all forms of violence against women.

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53 Decision of 19.06.2014 on case 105/2014; Council Annual Activity Report for 2014, page 20. Available online: <http://egalitate.md/index.php?pag=page&id=883&l=en>.

54 Decisions on cases 041/13 and 050/14. Council Annual Activity Report for 2014, page 20. Available online: <http://egalitate.md/index.php?pag=page&id=883&l=en>.

55 Decision of 30.10.2014 on case 098/14, available online at [http://egalitate.md/media/files/files/decizi\\_098\\_14\\_depersionalizat\\_6424837.pdf](http://egalitate.md/media/files/files/decizi_098_14_depersionalizat_6424837.pdf).

### 3. Discrimination against persons with disabilities

- 3.1. Legal capacity of persons with mental disabilities:** the Republic of Moldova adopted Law no. 60 on social inclusion of people with disabilities, recognizing their legal capacity in the same manner as for the others. Moreover, the provisions governing legal capacity do not comply with the standards of the Convention on the Rights of Persons with Disabilities. Civil legislation in force recognizes only two situations - full capacity or lack of capacity. This generates negative consequences for people with mental health problems, who can be declared incapacitated and placed under guardianship.
- 3.2. With the deprivation of legal capacity, these persons are deprived of the possibility to exercise their most fundamental rights - the right to vote, the right to marry, the right of access to justice and the right to decide on medical treatment. All decisions are made by the guardian substituting the person, completely ignoring the will of the person under guardianship.
- 3.3. The Council is concerned that the legislation does not provide for an individualized approach, based on assessing the actual level of ability of individuals to make conscious decisions. Although a bill has been drafted that provides for the introduction of supported decision-making mechanisms for the exercise of their legal capacity, this draft maintains the system of guardianship.
- 3.4. Voting rights:** the national legislation correlates a person's right to participate in the political and public life with its legal capacity. Under the Electoral Code, the persons declared incapacitated by a final judgment of the court, do not have the right to vote. This negatively affects especially people with mental disabilities. Since the person suffering from a mental disease or impairment is declared incapable by a court decision, he/she automatically loses the right to express his/her choice by voting in elections or referendum. Therefore, the person is excluded from political participation, regardless of the actual and individual functional capacity. In addition, the law on political parties provides that political parties can be established only by the citizens entitled to vote. Accordingly, the exclusion from the right to vote of persons under guardianship also generates a ban on any other political activities.



3.5. People with disabilities should be provided with the opportunity to exercise their right to vote either directly or through a freely chosen representative. In this regard, a draft law providing for the removal of these restrictions was voted in second reading by the Parliament, but was not yet promulgated by the President of the country.

**3.6. Accessibility of infrastructure and information:** a challenge in the field of social inclusion of persons with disabilities relates to ensuring the accessibility of buildings, public transportation and information. Not adapting these objects of the physical environment to the needs of people with disabilities constitutes barriers to exercising their fundamental rights on an equal basis with others. During its activity, the Council has noted the inaccessibility of public and social institutions buildings for the people with disabilities in 16% of discrimination cases. Although the legal framework provides for quite high standards of accessibility, the problem lies in the failure to implement in practice or faulty implementation of these regulations.

**3.7. Assistance for persons with disabilities:** by amending Law no. 156 on state social insurance pensions, it was decided to exclude the period of care for people with severe disabilities from the contribution period. In 2013, the Regulation on organization and operation of Social Service “Personal Assistance” has entered into force. This Regulation provides for the possibility of the people taking care of persons with disabilities to conclude individual labor contracts with the local authorities. In this way, this period is remunerable and included in the contribution period required to acquire pension rights.

3.8. The discrepancy between these regulations has generated an unfavorable situation for people who have looked after a person with disabilities in the period since the amendment of the law and entry into force of the Regulation. For these individuals, the period of care for the person with disabilities is not considered a contributory one. In this regard, the Council has noted the discrimination of parents by association with their children with severe disabilities.<sup>56</sup> This discrimination continues even today because the service, being implemented gradually, is not available to

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<sup>56</sup> Decision of 13.02.2014 on the case 030/2013, available online at [http://egalitate.md/media/files/files/decizie\\_fin\\_conf\\_cauza\\_nr\\_030\\_catre\\_das\\_si\\_mmpsf\\_2330661.pdf](http://egalitate.md/media/files/files/decizie_fin_conf_cauza_nr_030_catre_das_si_mmpsf_2330661.pdf).

everyone. In 2014 there were 1,542 personal assistants who were looking after 1571 persons with disabilities. The total number of people with severe disabilities at that time amounted to 27,919 people.<sup>57</sup> Correlating these data, it is obvious that there is a significant number of individuals providing personal assistance not covered by this service.

### **Recommendations:**

- 3.9. Abolish the substitution model in the decision-making process and establish the supported decision-making model along with corresponding implementation mechanism;
- 3.10. Abrogate discriminatory restrictions to vote and ensure the exercise of political rights by all persons with disabilities;
- 3.11. Implement an effective mechanism of sanctioning non-compliance with accessibility standards;
- 3.12. Develop and implement a new strategy on the inclusion of persons with disabilities, ensuring adequate funds for ensuring accessibility of infrastructure and information.
- 3.13. Adopt positive transition measures to include the period of care for a person with severe disabilities in the contribution period until the full implementation of the service;
- 3.14. Amend the legal framework to determine local public authorities to plan adequate financial resources to support the implementation of social service “Personal Assistance”.

## **4. Discrimination on the ground of conscience, thought and religion**

- 4.1. The special law governing freedom of conscience, thought and religion directly **determines for the Orthodox religion a privileged position over other religions**. Article 15 of Law no. 125 expressly recognizes the special importance and leading role of the Christian Orthodox religion and the Orthodox Church in the Republic of Moldova.

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<sup>57</sup> Annual Social Report for 2014. The Ministry of Labour, Social Protection and Family, p. 160. Available online: <http://www.mmprf.gov.md/sites/default/files/document/attachments/rsa2014ro.pdf>.

- 4.2. Enshrining the state attachment to a particular religion in law undermines the role of other religions and leads to discrimination against representatives of religious minorities. The Council has examined cases when the **local public authorities have banned the assemblies of religious minority cultures, without an objective and reasonable justification.**<sup>58</sup> Such actions on behalf of the authorities are discriminatory and violate the freedom to manifest religion and freedom of association.
- 4.3. In addition, minority religious groups face difficulties registering their religious community because the law imposes formal requirements on unjustified grounds of nationality and domicile. This approach is discriminatory and violates foreigners' right to free expression of religion or religious beliefs.
- 4.4. Observing the freedom of conscience, thought and religion of all people is a challenge also in education. **In its case law, the Council found practices of harassment of students with atheistic beliefs by teachers.**<sup>59</sup>

### **Recommendations:**

- 4.5. Adjust the legislation to ensure the observance of freedom of conscience, thought and religion for everyone;
- 4.6. Revise the course on religious education from the perspective of diversity, equality and non-discrimination.

## **5. Discrimination against Roma**

**5.1. Roma people represent the most disadvantaged minority group in Moldova.** Although, the Government has recently finalized the implementation of the Action Plan in support of the Roma population (2011-2015), the effective exercise of rights of Roma remains a challenge for national authorities.

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<sup>58</sup> Decision of 21.01.2014 on the case 029/2013, available online at [http://egalitate.md/media/files/files/decizia\\_cauza\\_nr\\_029\\_2013\\_cultul\\_penticostal\\_9910224.pdf](http://egalitate.md/media/files/files/decizia_cauza_nr_029_2013_cultul_penticostal_9910224.pdf).

<sup>59</sup> Decision of 15.10.2014 on the case no. 164/2014, available online at [http://egalitate.md/media/files/files/decizie\\_nr\\_t\\_i\\_164\\_final\\_438186.pdf](http://egalitate.md/media/files/files/decizie_nr_t_i_164_final_438186.pdf).

5.2. The Council is concerned about the **persistence of stereotypes and discriminatory attitudes of the majority of population towards the Roma.**<sup>60</sup> These perceptions lead to discrimination and exclusion of the representatives of this ethnic group in the labor market, in education, in access to healthcare services and in other social spheres. Roma women are subject to double discrimination because of their ethnicity and sex. The complaints submitted to the Council confirm the persistence of discrimination of Roma people in access to goods and services available to the public.<sup>61</sup>

5.3. The presence of ethnicity and race prejudices among the representatives of the public authorities generates serious forms of discrimination. In two examined cases, the Council found racial discrimination in the actions of the employees of internal affairs bodies through racial profiling.<sup>62</sup>

### **Recommendations:**

5.4. Develop and implement a comprehensive policy for the support of Roma people, ensuring allocation of corresponding resources.

## **6. Legislation on hate crimes**

6.1. The criminal law in force stipulates only “social, national, racial or religious hatred” as reasons for hatred. These reasons serve as aggravating circumstances for any of the criminal offenses provided for in the special part of the Criminal Code. For a number of crimes, the reasons for social, national, ethnic or religious hatred constitute qualifying signs of their composition. However, the criminal law does not recognize the offences based on hatred and prejudice as criminal acts in themselves. Prosecution of hate crimes is possible only if these resulted in consequences provided by law.

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60 Decisions of 13.10.2014 on the case no. 159/2014, available online at [http://egalitate.md/media/files/files/decizia\\_cauza\\_renato\\_usatii\\_r\\_5487969.pdf](http://egalitate.md/media/files/files/decizia_cauza_renato_usatii_r_5487969.pdf). Decision of 28.09.2015 on the case no. 293/15, available online at [http://egalitate.md/media/files/files/decizie\\_293\\_2015\\_3555799.pdf](http://egalitate.md/media/files/files/decizie_293_2015_3555799.pdf).

61 Decision of 13.02.2015 on the case no. 190/2014, available online at [http://egalitate.md/media/files/files/decizie\\_190\\_2015\\_2000159.pdf](http://egalitate.md/media/files/files/decizie_190_2015_2000159.pdf).

62 Decision of 28.05.2015 based on the case no. 239/2015, available online at [http://egalitate.md/media/files/files/decizie\\_239\\_2015\\_depersonalizat\\_6318337.pdf](http://egalitate.md/media/files/files/decizie_239_2015_depersonalizat_6318337.pdf).

- 6.2. Hate acts, which do not result in considerable physical or material damages, are qualified in most cases as misdemeanors/offences. The Code of Administrative Offences does not include reasons of hatred and prejudice and establishes symbolic sanctions that do not restore the justice proportionally and efficiently following harmful events based on hatred or prejudice.
- 6.3. In order to overcome these gaps in the legislation, a draft law criminalizing offenses and crimes motivated by prejudice, contempt or hatred was drafted. The draft expands the list of grounds for hatred and prejudice, covering all the criteria that are protected by anti-discrimination legislation. Although this initiative is a significant step in the implementation of international obligations of the Republic of Moldova, it is necessary for the draft law in question to be reviewed and improved. In this regard, the Council has submitted the necessary recommendations within the opinion submitted to the Ministry of Justice.

**Recommendation:**

- 6.4. Adopt the legal framework to ensure protection against all illegal actions based on hatred and prejudice.







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